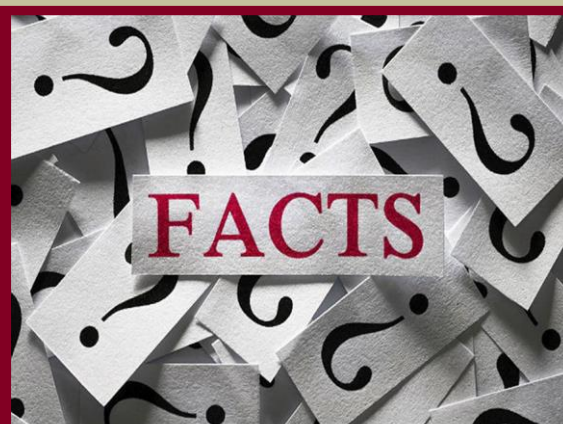




DIVISION OF INSPECTOR GENERAL
Ken Burke, CPA
Clerk of the Circuit Court and Comptroller
Pinellas County, Florida



INVESTIGATION OF SCHOOL DISTRICT OF PALM BEACH COUNTY SUPERINTENDENT – PERSONNEL ACTION

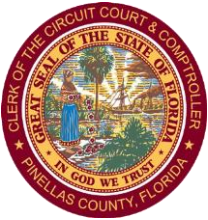


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REPORT NO. 2023-03
FEBRUARY 17, 2023



Ken Burke, CPA

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PINELLAS COUNTY, FLORIDA

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February 17, 2023

Frank Barbieri Jr., Esq., Board Chair and Board Members
School District of Palm Beach County
3300 Forest Hill Boulevard, Suite C-316
West Palm Beach, FL 33406-5869

RE: Investigation of a Complaint Alleging Misconduct or Other Wrongdoing Involving the School District of Palm Beach County Superintendent

Pursuant to the Interlocal Agreement for Provision of Inspector General Services between the School Board of Palm Beach County, Florida, and the Office of the Clerk of the Circuit Court and Comptroller of Pinellas County, Florida, the Division of Inspector General's Public Integrity Unit has completed an investigation of the following allegations:

1. The Superintendent directed staff to change the curriculum without following procedures. **Unfounded.**
2. The Superintendent and/or its staff removed books from the school library without following procedures. **Unfounded.**
3. The Superintendent retaliated against the complainant for disclosing the actions in the first two allegations by transferring and demoting the complainant. **Unfounded.**

To determine whether the allegations were substantiated, we reviewed policies, procedures, and appropriate records. We also interviewed staff and other parties, as needed. Our investigation was performed according to the *Principles and Standards for Offices of Inspector General* and *The Florida Inspectors General Standards Manual* from The Commission for Florida Law Enforcement Accreditation.



The Division of Inspector General uses the following terminology for the conclusion of fact/finding(s):

- **Substantiated** – An allegation is substantiated when there is sufficient evidence to justify a reasonable conclusion that the allegation is true.
- **Unsubstantiated** – An allegation is unsubstantiated when there is insufficient evidence to either prove or disprove the allegation.
- **Unfounded** – An allegation is unfounded when it is proved to be false or there is no credible evidence to support it.

The recommendations presented in this report may not be all-inclusive of areas where improvement may be needed; however, we believe implementation of the recommendations will strengthen the current internal controls.

We appreciate the cooperation shown by the staff of the School District of Palm Beach County during the course of this investigation.

Respectfully Submitted,



Melissa Dondero
Inspector General/Chief Audit Executive

cc: Ken Burke, CPA
Pinellas County Clerk of the Circuit Court and Comptroller
Ex Officio County Auditor

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INTRODUCTION

Abbreviations

ACLU	American Civil Liberties Union of Florida, Inc. v. Miami-Dade County School Board
CAO	Chief Academic Officer
Clerk	Pinellas County Clerk of the Circuit Court and Comptroller
FS	Florida Statutes
HB	House Bill
HR	Human Resources, School District of Palm Beach County
IG	Division of Inspector General, Pinellas County Clerk
LGBTQ	Lesbian, Gay, Bisexual, Transgender, Queer/Questioning
OIG	Office of Inspector General, School District of Palm Beach County
Pico	Board of Education, Island Trees Union Free School District No. 26 v. Pico
School Board	School Board of Palm Beach County
SDPBC	School District of Palm Beach County
SHRM	Society for Human Resource Management
Virgil	Virgil v. School Board of Columbia County, Fla.

Background

The School Board of Palm Beach County (School Board) adopted School Board Policy 1.092 on December 14, 2011 (OIG Policy), creating the School Board's Office of Inspector General (OIG). The OIG Policy requires an external agency to investigate allegations of wrongdoing against a School Board member, the Superintendent, or any employee in the School Board's OIG. The Pinellas County Clerk of the Circuit Court and Comptroller's (Clerk) Division of Inspector General (IG) agreed to serve in the capacity of the external agency to provide these services. Therefore, on August 12, 2014, the Clerk and the School Board entered into an interlocal agreement through the Clerk's IG.

On August 10, 2022, the OIG referred a complaint against the School District of Palm Beach County (SDPBC) Superintendent to the Clerk's IG.

Allegations

The IG initiated an investigation after receiving a complaint from the OIG. The complaint alleged the following:

1. The Superintendent directed staff to change the curriculum without following procedures.
2. The Superintendent and/or its staff removed books from the school library without following procedures.
3. The Superintendent retaliated against the complainant for disclosing the actions in the first two allegations by transferring and demoting the complainant.

Investigative Activity

During the course of the investigation, we performed the following to obtain evidence to conclude on the allegations:

- Reviewed SDPBC policies, Florida Statutes (FS), and other relevant rules and regulations
- Reviewed emails, witness testimony, and other relevant documents
- Interviewed current and former SDPBC employees

INVESTIGATIVE CONCLUSIONS

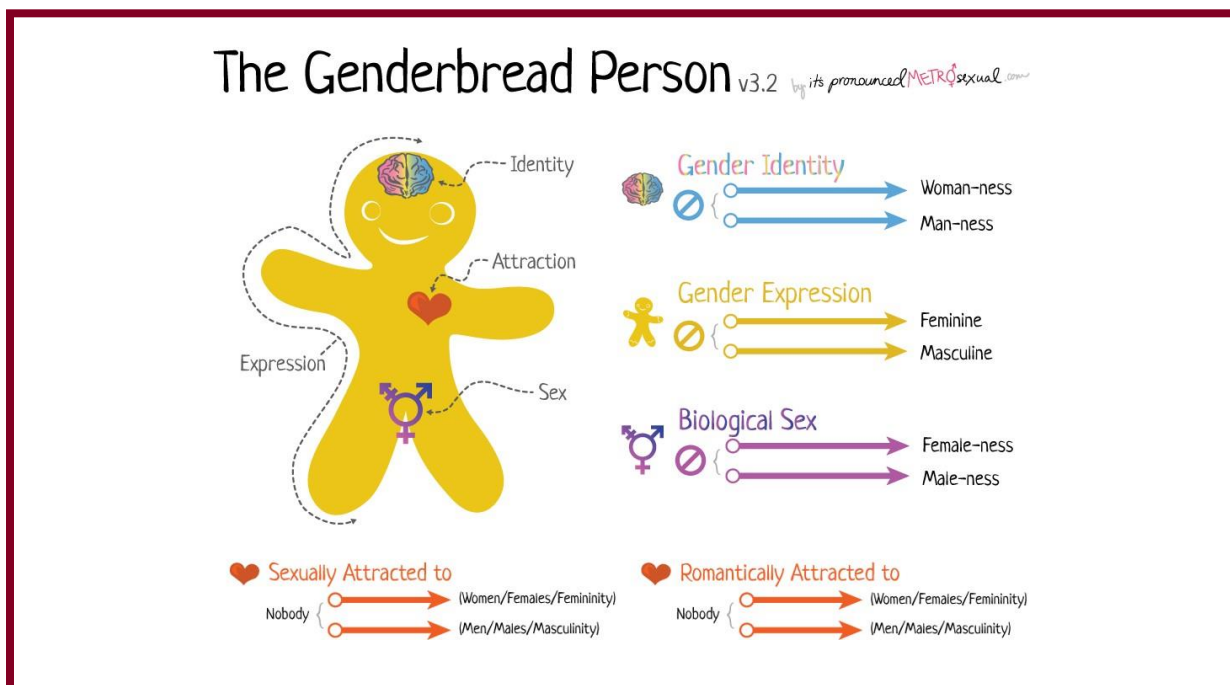
The IG uses the following terminology for the conclusion of fact/finding(s):

- **Substantiated** – An allegation is substantiated when there is sufficient evidence to justify a reasonable conclusion that the allegation is true.
- **Unsubstantiated** – An allegation is unsubstantiated when there is insufficient evidence to either prove or disprove the allegation.
- **Unfounded** – An allegation is unfounded when it is proved to be false or there is no credible evidence to support it.

During the course of the investigation, we determined the following facts to conclude on the allegations:

1. The Superintendent directed staff to change the curriculum without following procedures.

On May 4, 2022, the Chief Academic Officer (CAO) asked the complainant to remove the “genderbread” graphic shown below from the 12th grade Human Growth and Development Curriculum. Per the CAO, this was the Superintendent’s request. The complainant indicated it would be removed but expressed concern for changing the School Board approved curriculum without the School Board’s knowledge or vote.



The complainant indicated in an interview that FS Section 1003.42 Required Instruction, of the Early Learning-20 Education Code, requires the following:

“(b) All instructional materials, as defined in s. 1006.29(2), used to teach reproductive health or any disease, including HIV/AIDS, its symptoms, development, and treatment, as part of the courses referenced in subsection (5), must be annually approved by a district school board in an open, noticed public meeting.”

The complainant felt that this law required the School Board to approve changes to the curriculum. However, the language does not dictate requirements for curriculum changes subsequent to School Board approval. In addition, School Board Policy 8.08 Proposed Changes in Curriculum states:

“All changes in the curriculum of any school must have approval of the Superintendent.”

On January 19, 2022, the School Board reviewed and approved the Human Growth and Development Instructional Materials, which included units of instruction to be taught in the spring of 2022 for each grade level. The 12th grade units were listed as follows:

- Modified content from One Love Foundation
- That’s Not Love, One Love Foundation
- Video: *Bill Nye Saves the World*, Netflix, (“Bill Nye Destroys the Gender Binary”)

The School Board reviewed and approved the list above. The SDPBC website contained the lesson plans to be used to teach the Human Growth and Development curriculum for each grade. For 12th grade, one lesson plan for Consent, Sexual Harassment & Gender Awareness included the genderbread graphic as one of the instructional materials. SDPBC staff indicated the School Board is not provided the information on the website; however, it is there for review for any interested parties.

Per the Superintendent, he chose to remove the graphic when the SDPBC was planning the implementation of three new House Bills (HBs). The Superintendent’s reasoning was because the graphic appeared to be marketed for younger children by using a gingerbread person. The Superintendent believed removing the graphic aligned with the intent of the proposed HBs.

FS 1003.42 does not include language regarding removing sections of the curriculum. Removing a graphic may or may not be considered a change to the curriculum. If it is considered a change, School Board policy requires the Superintendent to approve any changes made. No other legal requirement was cited related to curriculum changes. Absent any requirement to present the removal of one graphic to the School Board for approval, we concluded this allegation was unfounded.

2 The Superintendent and/or its staff removed books from the school library without following procedures.

In January 2022, three HBs were introduced, that were subsequently approved:

House Bill #	House Bill Title	Approved by Governor	Effective Date
7	Individual Freedom	April 22, 2022	July 1, 2022
1467	K-12 Education	March 25, 2022	July 1, 2022
1557	Parental Rights in Education	March 28, 2022	July 1, 2022

The SDPBC held work group meetings in April and May 2022 to determine how to implement any ensuing HB requirements, as well as discuss HB 241: Parents’ Bill of Rights, approved by the Governor June 29, 2021. Per the complainant, HB 241 guidance was vague in some sections, and while awaiting further guidance, the three HBs above were introduced. Therefore, all four bills were addressed during the work group meetings. A summary of each HB from the Committee on Education of the Florida Senate follows:

HB 241 Parents’ Bill of Rights

“The bill establishes the ‘Parents’ Bill of Rights.’ The bill provides that the state, its political subdivisions, any other governmental entity, or other institution may not infringe upon the fundamental rights of a parent to direct the upbringing, education, health care, and mental health of a minor child. If those entities infringe upon a parent’s fundamental right, they must demonstrate that the action is reasonable and necessary to achieve a compelling state interest, and the action must be narrowly tailored and not otherwise served by less restrictive means.

The bill enumerates a list of rights that a parent possesses in order to direct the education of his or her child and be informed about the child’s educational programs. The bill also requires a school district to promote parental involvement in the public school system by providing access to the child’s studies and instructional materials while recognizing a parent’s right to withdraw the child from objectionable portions of the school’s curriculum.”

HB 7 Individual Freedom

“The bill includes provisions designed to protect individual freedoms and prevent discrimination in the workplace and in public schools. The bill also conforms the identification of protected classes in the law prohibiting discrimination in Florida’s K-20 educational system to those identified in federal law and the Florida Civil Rights Act.”

HB 1467 K-12 Education

“The bill (Chapter 2022-21, L.O.F.) establishes 12 year terms limits for school board members, and modifies school district requirements for instructional materials, including instructional materials in school libraries and media centers to provide increased oversight over, and public access to, all materials used in instruction.”

HB 1557 Parental Rights in Education

“The bill (Chapter 2022-22, L.O.F.) reinforces a parent’s fundamental right to make decisions regarding the care and upbringing of his or her child in the public school setting....

The bill prohibits a school district from maintaining procedures that require school district personnel to withhold from a parent, or encourage a student to withhold, information related to a student’s mental, emotional, or physical health or well-being. School district procedures may authorize school district personnel to withhold information only for a reasonable belief that disclosure would subject the student to abuse, abandonment, or neglect.

The bill prohibits classroom instruction on sexual orientation or gender identity in kindergarten through grade 3 or in a manner that is not age-appropriate or developmentally appropriate for students.”

It is relevant to note while some of the legislation above has subsequently faced legal challenges, such litigation had no impact on the effectiveness of the HBs during the time period subject to the complaint.

The complainant alleged that during a work group meeting in May 2022, the following occurred:

- The complainant and another staff member responsible for libraries and instructional materials proposed a checklist to be used for classroom libraries to implement HB requirements. The two also recommended waiting for further clarification from the Department of Education.
- The Deputy Superintendent suggested searching all libraries for books using the search term “LGBTQ” (Lesbian, Gay, Bisexual, Transgender, Queer/Questioning). The complainant responded that legally, there is a difference between class libraries and media centers, and using that search term would be a violation of law, as it would be based on viewpoint. The Deputy Superintendent indicated the books would not be removed, but reviewed.
- The complainant asked the Deputy Superintendent if two books already pulled, titled *Call Me Max* and *I Am Jazz*, would be returned. The Deputy Superintendent said, “Absolutely not.”

Timeline of Events

- January 2022: HBs 7, 1467, and 1557 were introduced. SDPBC administration began assessing impacts of these proposed bills with HB 241, which was approved by the Governor on June 29, 2021, and effective July 1, 2021.
- March 1, 2022: The Superintendent asked the CAO about a book, *Call Me Max*, since a School Board member questioned it after a parent questioned the appropriateness for second grade.
- March 7, 2022, the Superintendent reported to the School Board member, that per the CAO, the book was appropriate for second grade. The School Board member requested a copy of the book.
- March 25, 2022: HB 1467 was approved by the Governor (with an effective date of July 1, 2022).
- March 28, 2022: HB 1557 was approved by the Governor (with an effective date of July 1, 2022).
- March 31, 2022: The Deputy Superintendent emailed all SDPBC principals stating HB 1557 was signed by the Governor on March 28, 2022, and several textbooks would be reviewed. Specifically, *Call Me Max* and *I Am Jazz* were being reviewed and principals should move them to a location where students do not have access during the review period.
- April 22, 2022: HB 7 was approved by the Governor (with an effective date of July 1, 2022).
- May 25, 2022: A List of Books Submitted for Review was created to accompany an email communication to teachers about upcoming legislation. The two books on the list were *Call Me Max* and *I Am Jazz*.
- May 26, 2022: The Deputy Superintendent emailed all teachers regarding the review of books with the attached List of Books Submitted for Review mentioned above. The communication stated that any books on the list (*Call Me Max* and *I Am Jazz*) should be moved from the classroom library to a location where students did not have access during the review period. Separately, a School Board member asked SDPBC staff if the book, *Flamer*, was in schools.
- May 27, 2022: SDPBC confirmed *Flamer* was in four SDPBC high schools; staff added the book to the List of Books Submitted for Review and notified teachers and media specialists of the additional book to be pulled during the review period.

- June 9, 2022: SDPBC General Counsel opined that under School Board policy, a book could be removed from a classroom library or school library for review without a complaint or objection.
- June 14, 2022: A School Board member requested a list of the books that were removed; later, the same School Board member notified a constituent that SDPBC staff pulled *Gender Queer* and *Flamer* from secondary media centers based on the criteria of Appropriateness per School Board Policy 8.12 Selection of Library Media Center Materials. The Superintendent indicated *Gender Queer* was brought to his attention by staff and after assessment, removed from all libraries.
- July 1, 2022: HB 7, 1467, and 1557 became effective.

In interviews with the Superintendent and Deputy Superintendent, both indicated the SDPBC was acting in order to prepare for implementation of state law. In addition, during the time a School Board member had questioned the Superintendent about *Flamer*, another staff member showed the Superintendent a book called *Gender Queer*. After subsequent review by SDPBC staff, the two books were pulled, as they were deemed inappropriate per School Board policy 8.12 Selection of Library Media Center Materials, which supports such removal.

The complainant was concerned removing the books would violate *Board of Education, Island Trees Union Free School District No. 26 v. Pico (Pico)*. The SDPBC General Counsel opined on June 9, 2022, regarding book removal (as discussed below). In the opinion, the General Counsel discussed *Pico*. Specifically, the General Counsel considered First Amendment principles that govern materials in school libraries and classroom libraries.

With regard to school libraries, the General Counsel considered two cases: *Pico* and *American Civil Liberties Union of Florida, Inc. v. Miami-Dade County School Board (ACLU)*.

“With respect to school library materials, there is not actually binding precedent in our jurisdiction with respect to the First Amendment. Instead, there is an opinion of the Supreme Court that did not receive a majority vote (Board of Education, Island Tress [sic] Union Free School District No. 26 v. Pico, or ‘Pico’ for short) and an Eleventh Circuit decision where the court declined to adopt a standard (American Civil Liberties Union of Florida, Inc. v. Miami-Dade County School Board, or ‘ACLU’ for short). While neither of these opinions provides binding precedent on the First Amendment, they provide persuasive authority that a court in our jurisdiction would likely consider in a challenge over a book removal.

Pico concerned a school board’s directive to remove a number of books from its libraries based on the books being ‘anti-American, anti-Christian, anti-Sem[i]tic, and just plain filthy.’ Four justices (but not a majority) agreed that school boards may not remove books from school library shelves ‘simply because they dislike the ideas contained in those books and seek by their removal to prescribe what shall be orthodox in politics, nationalism, religion, or other matters of opinion.’ In other words, the board could not remove books from the school library to deny students

access to ideas with which the board disagreed. But the board could remove books if they were pervasively vulgar or based on concerns about the educational suitability of the books. Another justice added offensive language and books being psychologically or intellectually inappropriate for the age group as valid grounds for removal....

Three of the justices (again, not a majority) agreed that the school library has special characteristics and that students accordingly have corresponding First Amendment rights with respect to the removal of materials from libraries. These justices explained that the school library is the ‘principal locus’ of a student’s freedom ‘to inquire, to study, and to evaluate, to gain new maturity and understanding.’ They emphasized that the use of the library was completely voluntary for students and that students’ selection of books was a matter of free choice. The justices distinguished the school library from the compulsory curriculum of the school, where the board had greater authority to ‘transmit community values’....

The school board in ACLU followed its established process for citizen requests to remove library materials. The established procedure was similar to the School Board’s Policy 8.1205, where the complaint was heard by the school’s principal, then a school-level committee, then the superintendent (who could have the book reviewed by a district-level committee), and finally an appeal to the school board. The ACLU court did not explicitly ground its First Amendment analysis on the fact that the school board had followed this robust administrative review. But the court repeatedly relied on the administrative record as demonstrating that the board was in fact motivated by the book’s educational unsuitability. The administrative record bolstered the claim that the book was inaccurate.

There was also a claim in ACLU that the school board had violated the due process rights of the plaintiffs, who were members of the ACLU and the Miami-Dade County Student Government Association. The argument was based on the board’s policy not expressly permitting the board to remove the challenged book from every library in the district. The court concluded that this was not a due process violation, however, because the policy was silent about what the board could do if it determined the book was educationally unsuitable, meaning the board retained the authority to take a reasonable action. Removing the book from every library in the district was a reasonable action.”

With regard to classroom libraries, the General Counsel analyzed *Virgil v. School Board of Columbia County, Fla.* (*Virgil*).

“The question in the case was whether the school board’s decision should be subject to the same First Amendment analysis as other decisions about what could be fairly characterized as part of the school curriculum. The court concluded that the particular school board decision at issue could be subject to that standard. Under that standard, the board’s decision was not unconstitutional so long as it

was reasonably related to legitimate pedagogical concerns. Legitimate pedagogical concerns included the emotional maturity of the intended audience with respect to potentially sensitive topics. Included within that were sex and vulgarity....

As noted above, the court approved the reasons for the board's decision, the sex and vulgarity in the book. The court also emphasized what the board did not do. The board did not 'ban' the book from the school altogether. The court emphasized that the book remained available in the school library... The court also noted that no student or teacher was 'prohibited from assigning or reading these works or discussing the themes contained therein in class or on school property.' The court contrasted the board's action with a case where a board 'banned' a book by prohibiting its mere possession anywhere on school property or even the school bus....

Considering the above, there is a good argument that classroom libraries are a part of the curriculum, or enough like the curriculum that the District can take reasonable action with respect to the materials in the classroom libraries....

That leaves the question of what actions the District may take with respect to classroom libraries. The District can act based on legitimate pedagogical concerns and it can take reasonable action in relation to those concerns. The actions being undertaken by the District at the present time appear reasonable. The District has taken the recent legislation, along with last year's State Board Rule on required instruction, and asked teachers to review their classroom libraries and identify materials for further review by a media specialist. The media specialist, in turn, will review and take specified action depending on what the particular issue was and whether the media specialist agrees."

The SDPBC General Counsel's conclusion based in part on the analysis above, was that under Policy 8.1205, a book could be removed from a classroom library or school library for review without a complaint or objection because the policy governs removal or restriction within the confines of the objection process but does not expressly prohibit removal or restriction outside of that process. Specifically, the General Counsel stated:

"From the governing law, it appears that removal of one class of materials—those that are pornographic or harmful to minors—is permitted upon discovery that they are in use or being made available at a school. It would appear from the Policy that the determination would need to be made by a library media specialist.

By statute, the School Board is generally responsible for all materials used in the classroom, which supports the authority to remove materials outside the objections process.

The District has recently moved forward with pulling materials from classroom libraries for review of the various criteria included in a wave of recent legislation,

as well as a State Board of Education rule adopted last year. Our office has worked with staff in developing the criteria for identifying materials for review for teachers, as well as for review and actions to be taken by the media specialist.”

However, the General Counsel also opined the current objection process may have been beneficial to follow in this situation.

“Nothing in the recent wave of legislation appears to require immediate removal or restriction of school library materials outside of the objections process. The objections process certainly could be followed for all materials in school libraries and there are benefits to following it. Case law on the First Amendment supports, but does not require, treating school libraries differently from classroom libraries, as well as for following established objections procedures before removing or restricting access to school library materials.”

School Board policy does not prohibit the Superintendent from removing books from school libraries or classrooms. Policy 8.1205 Objection Procedures for Instructional Materials, Library Media Materials, and Supplemental Classroom Materials, Including Reading Lists, outlines procedures for parents and Palm Beach County citizens to object to a specific book.

The SDPBC has begun to review and revise its policies to include language related to the recent legislation. Policy 8.1205 was revised to include the following additional language:

“In addition, the Superintendent or designee, even without an objection or challenge, has the authority to remove instructional materials, library media materials, supplemental classroom materials on reading list based on statutory considerations. The basis for the removal shall be documented.”

The Pinellas County Attorney’s Office reviewed the SDPBC General Counsel’s June 9, 2022, opinion and stated the legal conclusions therein are reasonable and defensible, based on the facts as presented, but takes no position as to any policy positions expressed.

We concluded the allegation is unfounded.

3. The Superintendent retaliated against the complainant for disclosing the actions in the first two allegations by transferring and demoting the complainant.

The complainant referred to the position change in the complaint as a “transfer” and “demotion,” but later described it as a “demotion” since the prior position was at a level of Assistant Superintendent and the new position was at a level of Director. The pay rate remained the same. For purposes of this report, we will refer to the change as an alleged demotion.

The complainant alleged they were demoted from Assistant Superintendent of Teaching and Learning to Director of Supplemental Educational Services, a personnel action the School Board approved on June 15, 2022. The complainant reported this demotion occurred in response to the complainant’s actions, both related to allegations 1 and 2. First, the complainant advised

their supervisor that the supervisor could not change the School Board approved curriculum for Human Growth and Development by removing the genderbread graphic without School Board approval. Second, the complainant reported to their supervisor that they were concerned that school staff seeking to identify books for removal from school libraries by searching for books using search terms such as “LGBTQ” would be a First Amendment violation under the *Pico* decision.

The complainant reported that their performance evaluations prior to the demotion were above average and their supervisor had not provided any feedback for improvement. The only meeting regarding a concern involving the complainant was when the Superintendent called the complainant regarding posts on the complainant’s Twitter account earlier in 2022.

The complainant’s supervisor previously obtained a legal opinion on the Twitter activity since a constituent had also reported it. The SDPBC General Counsel’s office indicated that the subject Tweet was protected speech under the First Amendment and that the employee should not be disciplined for it. Additionally, while subsidiary to First Amendment protections, the SDPBC’s Social Media Policy does not prohibit the complainant from posting personal Tweets.

School Board Policy 3.35 Transfers states:

“Transfer of an employee from one...department to another shall be approved by...supervisors concerned and recommended by the Superintendent for School Board approval.”

No other policies exist related to transfers and/or demotions.

On June 15, 2022, the complainant’s demotion was included on a SDPBC School Board agenda for approval as a transfer, and the complainant and their attorney addressed the School Board. The School Board voted 6-1 in favor of the transfer.

The complainant then filed a whistleblower complaint with the OIG, who denied whistleblower protection, but according to its interlocal agreement with Pinellas County, forwarded the complaint to the IG for review.

We interviewed the complainant and the Superintendent and both parties provided information for the timeline below:

- June 6, 2022: The Superintendent met with the complainant to discuss a transfer from Assistant Superintendent of Teaching and Learning to Principal of Polo Park Middle School. The Superintendent told the complainant their salary would be frozen until retirement in three years.
- June 8, 2022: The Superintendent scheduled a meeting with the complainant, but it never occurred. Before the meeting was scheduled, the complainant emailed the Superintendent, all School Board members, the General Counsel, and the Chief of Human Resources (HR), expressing concerns about the position change.

- June 8, 2022: The Chief of HR called the complainant to discuss the transfer to a new position, the Director of Equity and Wellness. The Chief of HR told the complainant their salary would be frozen until retirement in three years. The complainant asked the Chief of HR to read the complainant's earlier email and also stated the Director position was not a lateral transfer.
- June 13, 2022: The School Board agenda for the meeting on June 15, 2022, was posted. The complainant noted the agenda stated their position was being changed to Director of Supplemental Educational Services instead of Director of Equity and Wellness.
- June 15, 2022: The complainant and their attorney addressed the School Board with comments alleging retaliation. The School Board voted 6-1 to approve the position transfer.
- June 23, 2022: An HR Analyst emailed the complainant an acceptance letter about the complainant's new position. A staff member from the Compensation and Employee Information Services Department subsequently confirmed to the complainant that their salary would not be frozen, and the complainant would be eligible for raises (in contrast to what was communicated previously to the complainant).

The Superintendent indicated in an interview that he changed the complainant's position because he could not trust the information the complainant provided. The Superintendent provided an example of when he asked the complainant if the proposed HBs would affect the SDPBC, and the complainant indicated they would not. The Superintendent relied on the complainant's assertion and relayed this information to other parties, and later ascertained that the proposed HBs would likely impact the SDPBC.

In addition, a witness testified that they were given allegedly false information by the Superintendent about the HBs, and indicated they understood the source of the allegedly false information was the complainant. During the interview process, four witnesses testified that the complainant became visibly upset during meetings about the proposed HBs. Witnesses observed the complainant crying, shaking, and raising their voice. Two witnesses explained during moments of outbursts, the complainant compared the removal of the books to the actions of Nazi Germany. The overall conclusion from witnesses indicated the complainant's personal beliefs were interfering with their ability to perform the implementation of the HBs without bias, and they concluded the complainant struggled to separate their personal beliefs with the legal impacts of the HBs.

During an interview with the complainant, the complainant acknowledged that although they desired to get their prior position back, it was difficult for them to answer the question posed about whether or not they could perform the job duties given their personal beliefs.

The Superintendent also planned to reorganize staff positions and thought the Assistant Superintendent position should be removed, along with three other Assistant Superintendent

positions previously removed. The Superintendent acknowledged he did not explain the reasoning for the demotion to the complainant. Additionally, the complainant's former supervisor was unaware of the reason for the demotion.

The complainant contended the creation of their new position was not fiscally responsible because it added a salary expense to the SDPBC. The complainant indicated they did not ask the Superintendent for clarification about the reason for the demotion at the time, but when no justification was provided, the complainant assumed it was retaliatory, as described above. On June 8, 2022, the complainant emailed the Superintendent and copied all School Board members to inquire about the reasoning behind the demotion. No answer was provided.

We interviewed additional witnesses who reported it was common practice for the Superintendent to transfer employees to new positions based on his own judgment. However, the SDPBC is an at-will employer, and as such, the Superintendent has the authority to transfer positions. See additional information in Investigative Finding #1.

We concluded the allegation was unfounded.

INVESTIGATIVE FINDINGS

1. The SDPBC Does Not Have A Policy For Handling Sensitive Personnel Actions.

The complainant alleged their demotion was retaliatory, since they had not received any negative performance-related feedback. The complainant had voiced concerns over the SDPBC's handling of proposed legislation and felt that voicing those concerns led to their demotion. Interactions related to the demotion were as follows:

June 6, 2022

The Superintendent scheduled a meeting with the complainant for the same day. During the meeting, the Superintendent told the complainant he was transferring the complainant from Assistant Superintendent of Teaching and Learning to be the Principal of Polo Park Middle School. In addition, the Superintendent told the complainant their salary would remain unchanged until the complainant's retirement. The complainant did not ask for a reason for the transfer, and the Superintendent did not provide one.

June 8, 2022

In the morning, the Superintendent scheduled a phone call with the complainant. Before the call, the complainant emailed the Superintendent expressing concerns about being a principal without proper credentials. The Superintendent did not call the complainant for the scheduled meeting.

In the afternoon, the Chief of HR called the complainant to inform them that the Superintendent considered the complainant's disinterest in being a principal, and offered the complainant the Director of Equity and Wellness role. The Chief of HR stated the complainant's salary would remain unchanged until the complainant's retirement. No explanations were discussed for the position change. The complainant stated to the Chief of HR they did not want to accept a demotion.

June 13, 2022

The complainant's position change was posted to the School Board agenda, but the new position was now referred to as Director of Supplemental Educational Services. The change had not been shared with the complainant.

June 15, 2022

The complainant spoke at the School Board meeting and indicated they felt the position change was a retaliatory demotion. The School Board did not interact with the complainant about the concerns. The position change was approved 6-1.

The Superintendent acknowledged he did not explain his reasoning for the position change to the complainant. However, the Superintendent had the following reasons for the change:

- Lack of trust in the complainant's work performance (the complainant reported allegedly false information to the Superintendent, which the Superintendent subsequently reported to others).
- Reorganization objectives (the Superintendent desired to eliminate the Assistant Superintendent positions). The Superintendent eliminated one Assistant Superintendent position within a few weeks of becoming Superintendent (summer 2021) and the last in the fall of 2022.

The Society for Human Resource Management (SHRM) is recognized as an authority on employment management and recommends the following actions when a demotion is determined to be the appropriate action:

- *“Be respectful of the employee during the demotion discussion, keeping in mind that the organization is taking this step because of the desire to retain the employee and the expectation that he or she will be successful.”*
- *Clearly and honestly communicate the performance-related reasons for the demotion or the reasons why the organization is taking this action as opposed to termination. This second point could be instrumental in helping the employee respond positively to the transition.*
- *Clearly outline the new position and the transition plan (e.g., last date in the old role, first day in the new role, to whom the employee will report). If a pay reduction will occur, do not avoid this point. Address it in a straightforward manner.*
- *Be ready to respond to questions and requests such as:*
 - *‘Can I have a little more time in the position to improve?’*
 - *‘Can I move to a different position/department/location?’*
 - *‘Can I have a few days to think about it?’*
 - *‘What if I don’t want to take the position?’*
- *Be prepared should the employee have a very emotional and perhaps negative response. It may be necessary to escort the employee out of the office if the response is too negative or combative.*
- *If the employee is accepting of the demotion, you may want to use this meeting to work out a communication plan answering who will be told, when the demotion will be communicated and what information will be shared. Ensuring the employee retains his or her dignity through the process will increase the likelihood of a smooth and successful transition. The communication plan may have to wait if there is negative response or if the employee is provided with some time to consider it.”*

In addition, SHRM indicates the following regarding organization policies:

“As demotions are usually considered negative employment actions similar to a termination or being rejected for a promotion opportunity, there may be risks associated with questions of fairness, consistency with organizational policy and even discrimination. Therefore, ensuring that company discipline and performance management processes are followed will be critical.”

The SDPBC is an at-will employer. According to the National Conference of State Legislatures:

“At-will means that an employer can terminate an employee at any time for any reason... At-will also means that an employer can change the terms of the employment relationship with no notice and no consequences.”

No policy exists requiring SDPBC leadership to provide an employee with a reason for a demotion, transfer, or other organizational change. The Superintendent felt empowered to make organizational changes without explanation.

The complainant interpreted the alleged demotion to be retaliatory. Since nobody communicated to the complainant about the reasons for the change, the complainant was upset and sought legal counsel. As a result, SDPBC may face future litigation.

In addition, in a similar situation in the future, an employee may become unhappy with their employer and develop a negative attitude. Per SHRM:

“A negative attitude can spread quickly to or harmfully affect other employees. Therefore, managers should monitor the transition and quickly respond to any negativity being spread by the employee.”

In the end, demotions that occur within the right circumstances can provide an employer with the opportunity to retain a valuable employee while allowing the employee to be successful in a role more conducive with the knowledge, skills or abilities he or she has. Effectively managing the risks and preparing for all contingencies can result in a win for both employee and employer.”

We Recommend Management:

- A. Develop a School Board policy for handling sensitive personnel actions, such as demotions, transfers, and other organizational changes, and communicate the policy to all employees.
- B. Ensure there is a system in place for managers to solicit guidance from HR and other relevant experts when sensitive employment matters exist.



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